

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of

DETERMINATION OF ROYALTY RATES
FOR DIGITAL PERFORMANCE IN SOUND
RECORDINGS AND EPHEMERAL
RECORDINGS (WEB IV)

Docket No. 14-CRB-0001-
(2016-2010)

Copyright Royalty Board
Received
DEC 0 0 2014

**iHEARTMEDIA'S MOTION TO COMPEL SOUNDEXCHANGE TO PRODUCE
DOCUMENTS IDENTIFIED DURING THE DEPOSITION OF AARON HARRISON**

Pursuant to 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b), iHeartMedia, Inc. ("iHeartMedia") hereby requests that the Copyright Royalty Judges compel SoundExchange, Inc. ("SoundExchange") to produce the following documents, which were identified at the deposition of Aaron Harrison of Universal and are responsive to outstanding requests for the production of documents: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] The

documents are directly related to SoundExchange's written direct statement and sought by pending requests for the production of documents.

Pursuant to 37 C.F.R. § 351.5(b)(1), iHeartMedia certifies that the parties met and conferred with respect to these documents in person on December 5, 2014, by phone on December 6, 2014, and by email on December 7, 2014. Today is the deadline for filing a motion to compel and Sound Exchange has thus far refused to commit to produce these four documents, making intervention by the Judges necessary. The following Services support the relief

requested in this Motion: Pandora Media, Inc., Sirius XM Radio Inc., and the National Association of Broadcasters.

BACKGROUND

Mr. Harrison is Senior Vice President, Business & Legal Affairs, Global Digital Business, UMG Recordings, Inc. Among his other duties, Mr. Harrison negotiates deals with digital music services. *See* Harrison ¶ 1. In his written direct statement, Mr. Harrison asserts that “neither on-demand nor customized [*i.e.*, non-interactive] streaming services promote sales of recorded music.” *Id.* ¶ 11. He also states that “revenues from streaming service have become increasingly important to Universal’s ability to recover” its investment in the discovery, production, and marketing of recorded music. *Id.* ¶ 12. Mr. Harrison stated further that Universal “seek[s] to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenues from other” sources. *Id.* ¶ 16.

Based on these statements — and similar statements in other SoundExchange witnesses’ pre-filed testimony — the Services sought discovery of documents regarding both direct licensing deals with non-interactive services and the promotional effect of performances on non-interactive services, including those that simulcast terrestrial radio. First, the Services sought documents “related to the negotiation of the agreements of each witness’s company . . . with Digital Services offering . . . non-interactive . . . streaming, and any analyses or projections of anticipated revenues or earnings with respect to such agreements — including . . . negotiations that did not result in an executed license.”¹ Second, the Services sought documents showing “the

¹ Services Req. for Docs. No. 7 (excerpts attached as Ex. A); *see also id.* No. 45 (“All documents related to the contention on page 9 of the Harrison testimony that ‘we seek to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenue from other forms of exploitation’”); *id.* No. 46 (“Documents from January 1, 2009, to the present concerning Universal’s ‘approach to the market for the distribution of recorded music’ (Harrison testimony page 4)”).

existence or nonexistence of a substitutional or promotional effect by any Digital Service or terrestrial radio on other sources of record company revenue.”²

With respect to the first category of documents, SoundExchange agreed to provide a limited set of documents, but refused to provide any documents regarding Universal’s negotiations with services other than MySpace and Slacker.³ With respect to the second category of documents, SoundExchange has “agreed to produce . . . non-privileged documents” that are “generated and maintained at [each major record] company’s corporate level” regarding the promotional effect of non-interactive services,⁴ as well as those “sufficient to show the three major record companies’ strategy for digital licensing.”⁵

On Friday, December 5, 2014, the Services took Mr. Harrison’s deposition. At his deposition, Mr. Harrison revealed the existence of four specific documents — two in each category — that SoundExchange has not produced in discovery.

First, in discussing documents that Universal sent to iHeartMedia — [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² *Id.* Nos. 14 and 29; *see also id.* No. 10 (documents “reflecting” the record labels’ “strategy for licensing Digital Services, or the effect on the record companies’ revenues or business of such record company’s licenses”); *id.* No. 49 (“documents related to the . . . contentions of Mr. Harrison as to the promotional or substitutional impact of Digital Services”).

³ *See, e.g.,* SoundExchange Resp. and Objs. to Services Req. for Prod. No. 7 (excerpts attached as Ex. B). SoundExchange’s refusal to produce any internal documents regarding the Warner-iHeartMedia agreement is the subject of iHeartMedia’s separate, pending motion to compel.

⁴ SoundExchange Opp. to iHeartMedia Mot. To Compel at 4 (Nov. 21, 2014). SoundExchange’s refusal to produce such documents from 10 specific individuals who oversee promotional efforts for the major record labels is the other subject of iHeartMedia’s separate, pending motion to compel.

⁵ SoundExchange Resp. and Objs. to Services Req. for Prod. No. 10 (Ex. B).

[REDACTED] Rough Tr. of Dep. of Aaron Harrison (Dec. 5, 2014) ("Harrison Dep. Tr.") at 119:1-3, 124:13-21, 125:14-21 (excerpts attached as Ex. C). Mr. Harrison also testified that [REDACTED]
[REDACTED] See *id.* 202:14-204:6, 217:24-218:10.⁶

Second, Mr. Harrison revealed that Universal has [REDACTED]
[REDACTED]
Id. at 235:24-237:1. [REDACTED]
[REDACTED]
[REDACTED] *Id.* at 235:18-236:4.

Immediately following Mr. Harrison's deposition, the Services sought the production of these four documents. Thus far, SoundExchange has refused to produce any of them.

ARGUMENT

I. SOUNDEXCHANGE SHOULD BE COMPELLED TO PRODUCE THE SPREADSHEETS [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

⁶ On pages 217 and 218, the word [REDACTED]
[REDACTED]

to incremental performances beyond those Universal would otherwise receive under the statutory license. *Id.* at 112:12-113:8, 125:22-126:20.]]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 110:5-12, 117:9-16, 119:1-3, 124:13-21, 125:14-21. This spreadsheet thus provides a key insight into question before the Judges here.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *See id.* 202:14-204:6, 217:24-218:10.

These spreadsheets are directly related to Mr. Harrison's pre-filed direct testimony. Mr. Harrison stated, among other things, that "revenues from streaming service have become increasingly important to Universal's ability to recover" its investment in the discovery, production, and marketing of recorded music. Harrison ¶ 12. He stated further that Universal "seek[s] to ensure that services to which Universal grants the right to use sound recordings will

⁷ Copyright Royalty Board, *Determination of Royalty Rates for Digital Performance Right in Sound Recordings and Ephemeral Recordings*, Docket No. 2009-1 CRB Webcasting III, 79 Fed. Reg. 23,102, 23,111 (2014) (explaining that the Judges look to evidence where the "rights being sold were precisely the rights at issue in this proceeding"; the buyers "share characteristics with the buyers in the hypothetical market at issue in this case"; the "sellers are the same copyright owners whose copyrights are at issue in this case"; the "copyrights [would have been] used for statutory webcasting services"; and the evidence is roughly "contemporaneous with the time at which the hearing in this proceeding [will be] conducted").

generate revenue and not just divert revenues from other” sources. *Id.* ¶ 16. These spreadsheets

— and are therefore directly related to Mr. Harrison’s claims about Universal’s negotiations for direct licenses. Moreover, these spreadsheets are squarely within the scope of the Services’ Request No. 7, which sought documents “related to the negotiation of the agreements of each witness’s company . . . with Digital Services offering . . . non-interactive . . . streaming, and any analyses or projections of anticipated revenues or earnings with respect to such agreements — including . . . negotiations that did not result in an executed license.”

SoundExchange’s grounds for refusing to produce these two documents lack merit. First, SoundExchange has claimed that the documents are not directly related to Mr. Harrison’s testimony because he does not specifically discuss

⁸ But Mr. Harrison’s testimony repeatedly discussed Universal’s “approach to the terms on which we will authorize streaming services to use our repertoire.” Harrison ¶ 16. He also offered testimony about the “influence” that statutory rates have on “Universal’s negotiations with on-demand subscription services . . . [and] with webcasting services.” *Id.* ¶ 17. Universal’s provide specific examples of what Mr. Harrison characterized as Universal’s general approach to such negotiations. These documents will thus permit the Services and the Judges to assess Mr. Harrison’s general claims.

Second, SoundExchange has asserted that the documents are not responsive to Request No. 7, asserting that it is “clear from the text of Request No. 7 that it does not cover negotiations

⁸ Email from Rose Ehler to Jackson Toof, *et al.* (Dec. 7, 2014) (excerpt attached as Ex. D).

for agreements never reached.”⁹ SoundExchange simply misreads the request, which is reproduced in full below:

All documents related to the negotiation of the agreements of each witness’s company (or any of its subsidiary labels or affiliates) with Digital Services offering on-demand streaming, video streaming (including but not limited to YouTube and Vevo), or non-interactive, “programmed,” personalized, and/or customized streaming, and any analyses or projections of anticipated revenues or earnings with respect to such agreements — *including requests for licenses and negotiations that did not result in an executed license.*

The spreadsheets clearly fall within Request No. 7, as they contain [REDACTED]

[REDACTED]

[REDACTED] Finally, SoundExchange’s claims that it would be unduly burdensome to search for *all* documents responsive to this request.¹⁰ But iHeartMedia’s motion seeks only these two documents, which SoundExchange’s witness specifically identified during his deposition. Finding those two documents would not impose any material burden on SoundExchange.

II. SOUNDEXCHANGE SHOULD BE COMPELLED TO PRODUCE THE UNIVERSAL [REDACTED]

Mr. Harrison states in his pre-filed testimony that “neither on-demand nor customized [*i.e.*, non-interactive] streaming services promote sales of recorded music.” Harrison ¶ 11. He also states that Universal “employs a full analytics team” that, among other things, “analyzes . . . data . . . [to] help [Universal] make well-informed decisions regarding how to promote certain artists.” *Id.* ¶ 45. The two [REDACTED] that Mr. Harrison discussed at his deposition are directly related to these claims. [REDACTED]

[REDACTED]

⁹ Email from Rose Ehler (Ex. D).

¹⁰ *See id.* (referring the “massive burden” of searching “for *all* internal negotiating documents”).

“developing artists or artists that haven’t sold well in the past.”]] Harrison Dep. Tr. at 235:18-236:4. The documents will permit the Services and the Judges to test Mr. Harrison’s assertion that streaming does not promote sales of recorded music. The documents will also provide insight into Universal’s actual views — presumably drawn from the work of its analytics team — about the promotional value of obtaining additional performances on webcasting services.

The documents are also sought by the Services’ Requests Nos. 10, 14, 29, and 49. In responding to Request No. 10, SoundExchange represented that it would search for and produce documents “sufficient to show the three major record companies’ strategy for digital licensing.”¹¹ Furthermore, in opposing iHeartMedia’s pending motion to compel, SoundExchange stressed that it had “agreed to produce” “memoranda” that “refer[] or relat[e] to the existence or nonexistence of a substitutional or promotional effect by” webcasting “on other sources of record company revenue,” which it claimed “would be generated and maintained at the company’s corporate level.”¹² The [REDACTED] that Mr. Harrison discussed at his deposition squarely fall within the limited set of documents that SoundExchange has already agreed to produce: they are corporate level memoranda that refer or relate to the substitutional or promotional effect of webcasting on record company revenues. As Mr. Harrison testified, [REDACTED]

SoundExchange’s grounds for refusing to produce these two documents lack merit. SoundExchange has simply asserted that the documents are not directly related to Mr. Harrison’s

¹¹ SoundExchange Resp. and Objs. to Services Req. for Prod. No. 10 (Ex. B).

¹² SoundExchange Opp. to iHeartMedia Mot. To Compel at 4 (Nov. 21, 2014) (internal quotation marks omitted).

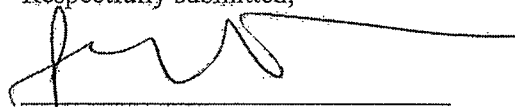
testimony and that it had not agreed to produce them.¹³ As shown above, neither claim is correct. Universal's willingness to offer [REDACTED] is highly relevant evidence that streaming services have a considerable promotional effect, and undermines SoundExchange's effort to show that such services have little or no such benefit to the record labels.

CONCLUSION

For the foregoing reasons, the Judges should grant the motion to compel and require SoundExchange promptly to produce the requested documents.

Dated: December 8, 2014

Respectfully submitted,



John Thorne
Scott H. Angstreich
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400.
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
jthorne@khhte.com
sangstreich@khhte.com

Counsel for iHeartMedia, Inc.

¹³ See Email from Rose Ehler (Ex. D).

CERTIFICATE OF SERVICE

I, Scott H. Angstreich, hereby certify that a copy of the foregoing PUBLIC version of iHeartMedia, Inc.'s Motion To Compel SoundExchange To Produce Documents Identified During the Deposition of Aaron Harrison has been served on this 8th day of December 2014 on the following persons:

<p>Kurt Hanson AccuRadio, LLC 65 E. Wacker Place, Suite 930 Chicago, IL 60601 kurt@accuradio.com</p> <p><i>AccuRadio, LLC</i></p>	<p>Jeffrey J. Jarmuth Law Offices of Jeffrey J. Jarmuth 34 E. Elm Street Chicago, IL 60611-1016 jeff.jarmuth@jarmuthlawoffices.com</p> <p><i>Counsel for AccuRadio, LLC</i></p>
<p>Catherine R. Gellis CGCounsel P.O. Box 2477 Sausalito, CA 94966 cathy@cgcounsel.com</p> <p><i>College Broadcasters, Inc.</i></p>	<p>David D. Golden Constantine Cannon LLP 1001 Pennsylvania Avenue NW, Suite 1300N Washington, DC 20004 dgolden@constantinecannon.com</p> <p><i>Counsel for College Broadcasters, Inc.</i></p>
<p>David Oxenford Wilkinson Barker Knauer, LLP 2300 N Street, NW, Suite 700 Washington, DC 20037 doxenford@wbklaw.com</p> <p><i>Counsel for Educational Media Foundation and National Association of Broadcasters</i></p>	<p>Kevin Blair Brian Gantman Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 kblair@kloveair1.com bgantman@kloveair1.com</p> <p><i>Educational Media Foundation</i></p>
<p>William Malone 40 Cobbler's Green 205 Main Street New Canaan, CT 06840-5636 malone@ieee.org</p> <p><i>Harvard Radio Broadcasting Co., Inc. and Intercollegiate Broadcasting System, Inc.</i></p>	<p>George D. Johnson GEO Music Group 23 Music Square East, Suite 204 Nashville, TN 37203 george@georgejohnson.com</p> <p><i>GEO Music Group</i></p>

PUBLIC

<p>Frederick J. Kass Intercollegiate Broadcasting System, Inc. 367 Windsor Highway New Windsor, NY 12553-7900 ibs@ibsradio.org ibshq@aol.com</p> <p><i>Intercollegiate Broadcasting System, Inc.</i></p>	<p>Jane Mago, Esq. Suzanne Head National Association of Broadcasters 1771 N Street, NW Washington, DC 20036 jmago@nab.org shead@nab.org</p> <p><i>National Association of Broadcasters</i></p>
<p>Bruce G. Joseph Karyn K. Ablin Michael L. Sturm Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 bjoseph@wileyrein.com kablin@wileyrein.com msturm@wileyrein.com</p> <p><i>Counsel for National Association of Broadcasters</i></p>	<p>Gregory A. Lewis National Public Radio, Inc. 1111 North Capitol Street, NE Washington, DC 20002 glewis@npr.org</p> <p><i>National Public Radio, Inc.</i></p>
<p>Kenneth L. Steinthal Joseph R. Wetzel King & Spalding LLP 101 Second Street, Suite 2300 San Francisco, CA 94105 ksteinthal@kslaw.com jwetzel@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>	<p>Ethan Davis King & Spalding LLP 1700 Pennsylvania Avenue, NW Suite 200 Washington, DC 20006 edavis@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>
<p>Antonio E. Lewis King & Spalding, LLP 100 N. Tyron Street Suite 3900 Charlotte, NC 28202 alewis@kslaw.com</p> <p><i>Counsel for National Public Radio, Inc.</i></p>	<p>Russ Hauth, Executive Director Harv Hendrickson, Chairman National Religious Broadcasters Noncommercial Music License Committee 3003 Snelling Avenue North Saint Paul, MN 55113 russh@saalem.cc hphendrickson@unwsp.edu</p> <p><i>National Religious Broadcasters Noncommercial Music License Committee</i></p>

<p>Karyn K. Ablin Jennifer L. Elgin Wiley Rein LLP 1776 K St. NW Washington, DC 20006 kablin@wileyrein.com jelgin@wileyrein.com</p> <p><i>Counsel for National Religious Broadcasters Noncommercial Music License Committee</i></p>	<p>Christopher Harrison Pandora Media, Inc. 2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com</p> <p><i>Pandora Media, Inc.</i></p>
<p>R. Bruce Rich Todd D. Larson Sabrina A. Perelman Benjamin E. Marks Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com sabrina.perelman@weil.com Benjamin.marks@weil.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>	<p>Gary R. Greenstein Wilson Sonsini Goodrich & Rosati 1700 K Street, NW, 5th Floor Washington, DC 20006 ggreenstein@wsgr.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>
<p>Jacob B. Ebin Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, NY 10036-6745 jebin@akingump.com</p> <p><i>Counsel for Pandora Media, Inc.</i></p>	<p>Cynthia Greer Sirius XM Radio Inc. 1500 Eckington Pl. NE Washington, DC 20002 cynthia.greer@siriusxm.com</p> <p><i>Sirius XM Radio Inc.</i></p>
<p>Patrick Donnelly Sirius XM Radio Inc. 1221 Avenue of the Americas 36th Floor New York, NY 10020 patrick.donnelly@siriusxm.com</p> <p><i>Sirius XM Radio Inc.</i></p>	<p>Martin F. Cunniff Jackson D. Toof Arent Fox LLP 1717 K Street, NW Washington, DC 20006 martin.cunniff@arentfox.com jackson.toof@arentfox.com</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>

<p>Paul Fakler Arent Fox LLP 1675 Broadway New York, NY 10019 paul.fakler@arentfox.com</p> <p><i>Counsel for Sirius XM Radio Inc.</i></p>	<p>Glenn D. Pomerantz Kelly M. Klaus Anjan Choudhury Melinda E. LeMoine Kuruvilla J. Olasa Jonathan Blavin Rose Leda Ehler Jennifer L. Bryant Munger, Tolles & Olson LLP 355 S. Grand Avenue, 35th Floor Los Angeles, CA 90071-1560 Glenn.Pomerantz@mto.com Kelly.Klaus@mto.com Anjan.Choudhury@mto.com Melinda.LeMoine@mto.com Kuruvill.Olasa@mto.com Jonathan.Blavin@mto.com Rose.Ehler@mto.com Jennifer.Bryant@mto.com</p> <p><i>Counsel for SoundExchange, Inc.</i></p>
<p>C. Colin Rushing Bradley E. Prendergast SoundExchange, Inc. 733 10th Street, NW, 10th Floor Washington, DC 20001 crushing@soundexchange.com bprendergast@soundexchange.com</p> <p><i>SoundExchange, Inc.</i></p>	

/s/ Scott H. Angstreich

Scott H. Angstreich
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400.
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
sangstreich@khhte.com

Counsel for iHeartMedia, Inc.



Exhibit A

PUBLIC

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In re

**DETERMINATION OF ROYALTY
RATES AND TERMS FOR
EPHEMERAL RECORDING AND
DIGITAL PERFORMANCE OF
SOUND RECORDINGS (*WEB IV*)**

Docket No. 14-CRB-0001-WR (2016-2020)

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
SOUNDEXCHANGE, INC. AND GEO MUSIC GROUP FROM LICENSEE
PARTICIPANTS**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 et seq., 37 C.F.R. § 351.5, the Copyright Royalty Judges' Scheduling Order dated August 29, 2014, and the Parties' agreement concerning the discovery schedule as submitted to the Judges on July 29, 2014 (the "Discovery Schedule"), you are required to respond to the following Document Requests propounded by the licensee participants in this proceeding. Pursuant to the Discovery Schedule, your written responses and documents responsive to these Requests must be delivered to counsel for Pandora Media Inc., iHeart Media, Inc., the National Association of Broadcasters, Sirius XM Radio Inc., the National Religious Broadcasters Noncommercial Music License Committee, National Public Radio, Intercollegiate Broadcasting System, Inc., AccuRadio, and Harvard Radio Broadcasting Co., Inc. on or before November 7, 2014.

DEFINITIONS

1. “Digital Service” means any service providing users with access to digital audio transmissions or digital phonorecord deliveries of sound recordings and/or music videos, whether for free or by subscription, whether by streaming or download (either permanent or temporary),

and terms to apply to Noncommercial Broadcasters and other Noncommercial Digital Services under the Statutory Licenses.

4. Each document referring to, discussing, supporting, undermining, or otherwise related to any or all aspects of SoundExchange's proposed rates and terms for Noncommercial Digital Services, including the proposed minimum fee, the proposed 159,140 monthly aggregate tuning hour fee threshold, and the usage fees that SoundExchange proposes to apply after the proposed 159,140 monthly aggregate tuning hour threshold is exceeded.

Document Requests Related to the Testimony of SoundExchange's Record Industry Witnesses (Dennis Kooker, Ron Wilcox, Aaron Harrison, Jeffrey S. Harleston, Simon Wheeler, Darius Van Arman, Fletcher Foster) and GEO Music Group

5. All agreements in effect or entered into since January 1, 2009 between the witness's company (or any of its subsidiary labels or affiliates) and any Digital Service, including any amendments, extensions or renewals of such agreements.

6. Each direct license agreement or other document constituting, reflecting, discussing, or evidencing authorization given by each witness's company to NPR/Public Radio, broadcasters affiliated with a college or university, one or more noncommercial religious broadcasters, or any other noncommercial broadcaster group to perform sound recordings outside of the scope of the section 114/112 statutory license (*e.g.*, on-demand streams, full album streams, etc.) by any SoundExchange witness company (including Sony, Warner, UMG, Beggars Group, Secretly Group, and/or Iconic Entertainment Group).

7. All documents related to the negotiation of the agreements of each witness's company (or any of its subsidiary labels or affiliates) with Digital Services offering on-demand streaming, video streaming (including but not limited to YouTube and Vevo), or non-interactive, "programmed," personalized, and/or customized streaming, and any analyses or projections of anticipated revenues or earnings with respect to such agreements – including requests for licenses and negotiations that did not result in an executed license.

8. For the agreements of each witness's company (or any of its subsidiary labels or affiliates) with any Digital Service offering on-demand streaming, video streaming, or custom, personalized or non-interactive streaming, all royalty statements/ statements of account from the Digital Service for each quarterly reporting period (or other regular reporting period specified by the agreement) since January 1, 2009.

9. To the extent not included in the royalty statements/statements of account responsive to Request No. 8, documents sufficient to show, on a quarterly basis, separately for each tier of service and fee level (*e.g.*, free tiers versus paid tiers), total payments collected from the Service and how those payments were calculated, revenue reported by the Service (including the calculation of revenue base if available), advances paid, number of subscribers, number of streams/plays during the reporting period, number of downloads, number of users, reported advertising and other ancillary revenue, Service retail price, the record company's pro rata share for any aspect of the Service reported, rates of conversion from fee to subscription services, and

any other data reported to the record company or subsidiary label (other than logs of specific songs streamed or downloaded).

10. Each document reflecting, referring to, or discussing each witness's company's strategy for licensing Digital Services, or the effect on the record companies' revenues or business of such record company's licenses with Digital Services, including any memoranda, checklists, templates, policy manuals, training materials, best practices or similar materials relating to such approach.

11. Annual financial statements for each witness's company (and, to the extent separately maintained, for each of the company's subsidiary labels) for the years 2009 to the present, including documents sufficient to show the company's revenue from statutory licensing, digital downloads, other digital sources, sales of physical units, and any other categories of sales or licensing revenue, and any financial forecasts and/or projections of revenues and costs covering the time period 2014 to 2020.

12. Documents sufficient to show each company's (and, to the extent separately maintained, its subsidiary labels' and affiliates') annual operating costs for the years 2009 to the present, detailed by category, including but not limited to costs associated with: the discovery, development, production, and distribution of sound recordings; the use of the company's sound recordings by streaming music services; and the amount of expenditure for all costs and expenses associated with the company's revenue identified in the previous request, as well as any forecasts and/or projections of such costs/expense covering any of the time period 2014-2020.

13. Documents sufficient to show for the years 2009 to the fiscal year ended March 2014, and any subsequent fiscal quarter, the amount of advances written off by the witness's company (or its subsidiary labels or affiliates), the number of releases not making a profit, any financial analysis of advances made (including amount of advances and whether the advance was recouped), and for each release with an non-recouped advance, the recording agreement (and any amendments thereto) governing that release.

14. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, referring or relating to the existence or nonexistence of a substitutional or promotional effect by any Digital Service or terrestrial radio on other sources of record company revenue.

15. All documents concerning to the promotional effects of terrestrial radio airplay and/or performances on any webcasting or streaming service, including (a) all analyses, research, studies, or surveys performed concerning such promotional effects; and (b) documents sufficient to show the amounts spent by each witness's company (or its subsidiary labels) to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

substitutional or promotional effect by any Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony) or terrestrial radio on other sources of record company revenue such as sales of CDs and permanent downloads or higher ARPU subscription offerings.

29. For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony's Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

30. For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony's Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

31. All documents related to the statement on pages 6-7 of Mr. Kooker's written direct testimony that "the highest ARPU is generated from paying subscribers of directly licensed services," including without limitation, all calculations of the ARPU for periods since January 1, 2009, for each Sony Music or Sony Subsidiary Label agreement with a Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony).

32. For each Sony agreement with a Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony), documents sufficient to show Sony Music's valuations, if any, of the following provisions of such agreements discussed by Mr. Kooker at pages 21-23 of his written direct testimony (or the additional consideration Sony receives when such provisions are not present): (a) payment structure based on [REDACTED]; (b) terms "intended [REDACTED], including without limitation, [REDACTED]"; (c) specification of audio quality; (d) security provisions; and (e) [REDACTED]; (f) reporting requirements; (g) auditing rights; (h) access to consumer data; and (i) duration of agreement terms.

39. For each Warner agreement with a Digital Service (including any “digital services,” “digital distribution services,” or digital partners” as Mr. Wilcox uses those term in his written direct testimony, e.g., at pages 4-7), documents sufficient to show Warner’s valuations, if any, of the following provisions of such agreements discussed by Mr. Wilcox at pages 6-7 of his Written Direct Testimony (or the additional consideration Warner receives when such provisions are not present): (a) payment structure based on [REDACTED]; (b) [REDACTED]; (c) [REDACTED]; (d) access to data; (e) security provisions; (f) holdback rights; (g) reporting requirements; (h) audit rights; and (i) short-term licenses.

**Document Requests Directly Related to the
Written Witness Testimony of Aaron Harrison**

40. All new partner questionnaires as described by Mr. Harrison in paragraph 23 of his testimony.

41. For each Universal (or any Subsidiary Label) agreement with a Digital Service, all calculations of the “effective rate” paid and ARPU (as described by Mr. Harrison at pp. 8 and 17-18 of his testimony) for periods since January 1, 2009.

42. For each Universal (or any Subsidiary Label) agreement with a Digital Service, documents sufficient to show Universal’s valuations, if any, of the following provisions of such agreements discussed by Mr. Harrison at pp. 17-24 of his testimony (or the additional consideration WMG receives when such provisions are not present): (a) advances, minimum guarantees, flat fees, and shortfall payments; (b) marketing commitments and guarantees; (c) holdback rights; (d) user data; (e) security precautions; (f) short deal terms; and (g) fan engagement, including but not limited to user emails.

43. In relation to Mr. Harrison’s contentions regarding Security Guarantees on p. 22, documents sufficient to show all instances where a statutory webcaster allowed users to “capture or download” content, offered its service in other territories, was hacked, or used “unencrypted progressive downloads” in a way that led to any Universal (or other) recordings being captured or hacked by users.

44. All studies, analyses, surveys, presentations, memoranda or other documents related to Mr. Harrison’s contention on pp. 4-6 that the market for recorded music is shifting from an “ownership model to an access model.”

45. All documents related to the contention on page 9 of the Harrison testimony that “we seek to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenue from other forms of exploitation, including higher ARPU subscription streaming services,” including all studies, analyses, memoranda or documents otherwise concerning similarities and/or differences between types of streaming services, and the degree to which they do or do not substitute for one another.

46. Documents from January 1, 2009, to the present concerning Universal’s “approach to the market for the distribution of recorded music” (Harrison testimony page 4), including but not limited to strategic plans, presentations, memos, analyses, etc., whether for Universal, any of its labels, or industry-wide.

47. All documents related to the contention on page 9 of the Harrison testimony that “Pandora is streaming music to users who might otherwise pay for a subscription or use a higher ARPU streaming service,” including all studies, analyses, memoranda or documents otherwise concerning whether and how Pandora or other webcasters do or do not substitute for paying subscriptions or use of services with higher ARPU.

48. All documents related to the contention on page 10 of the Harrison testimony that “on-demand services like Spotify compete directly with statutory webcasters like Pandora,” including all studies, analyses, memoranda or documents otherwise concerning such competition, and any competition between other statutory services and on-demand services like Spotify.

49. All studies, analyses, surveys, presentations, memoranda or other documents related to the following contentions of Mr. Harrison as to the promotional or substitutional impact of Digital Services:

- a. “Over the past few years, we have grown to understand that neither on-demand nor customized streaming services promote sales of recorded music” (p. 5)
- b. “If a user has ‘customized’ her or his preferences through a streaming service, the user knows they have a good chance of hearing songs they like, or others like them, and thus see a diminished need to own a particular recording”
- c. “these services are drawing consumers and revenue away from the sale of permanent downloads and CDs”
- d. “on-demand and customized streaming services do not promote sales of downloads”
- e. The requested documents include, without limitation, all documents concerning the potential or actual substitution of any Digital Service for any other Digital Service and/or sales of compact discs, vinyl records or digital downloads.

50. All documents, including without limitation any studies, analyses, surveys, presentations, memoranda or other documents, related to the statement in paragraph 13 of Mr. Harrison’s testimony that “we have found that streaming services cannot generate sufficient ARPU through advertising alone.”

**Document Requests Directly Related to the
Written Direct Testimony of Jeffrey Harleston**

51. Each document related to Mr. Harleston’s assertion in paragraph 5 of his testimony that there is a “significant investment involved in developing new music” as well as “inherent risks” and his assertions in paragraph 35 of his testimony that UMG’s revenues “have declined dramatically” and that “[t]his decline only increases the pressure on us to manage our costs and our losses wisely,” including, for each year from 2009 to the present, annual financial statements (including balance sheets, income statements, profit and loss statements, and cash flow statements), strategic or business plans, and projections for Universal Music Group (“UMG”) and, to the extent separately maintained, for any UMG subsidiary label (including, but not limited to, Motown Records, Interscope Records, Island Records, Def Jam Records, Geffen Records, A&M Records, Capitol Records, Virgin Records, Mercury Nashville, Universal Music




Exhibit B

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.

<hr/> In re:)	
)	
DETERMINATION OF ROYALTY)	Docket No. 14-CRB-0001-WR (2016-2020)
RATES AND TERMS FOR EPHEMERAL)	
RECORDING AND DIGITAL)	
PERFORMANCE OF SOUND)	
RECORDINGS (<i>WEB IV</i>))	

**SOUNDEXCHANGE, INC.'S RESPONSES AND OBJECTIONS TO LICENSEE
PARTICIPANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

GENERAL OBJECTIONS

1. SoundExchange, Inc. ("SoundExchange") objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon SoundExchange requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding, including applicable prior precedent.

2. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not "directly related" to SoundExchange's written direct statement. See 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

3. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

4. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad and/or unduly burdensome.

a central location in the normal course of business. SoundExchange further objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this document request as compound and containing multiple discrete subparts, to the extent it asks SoundExchange to gather documents from numerous companies. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange further objects to this request as directed at independent record labels for whom searching for such documents is unduly burdensome and as directed at Iconic Entertainment Group, which is not even a record company.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found at the corporate level of the three major record companies and agrees to produce agreements authorizing NPR or Public Radio to perform sound recordings outside of the scope of the §§ 114 and 112 statutory license kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

REQUEST FOR PRODUCTION NO. 7:

All documents related to the negotiation of the agreements of each witness's company (or any of its subsidiary labels or affiliates) with Digital Services offering on-demand streaming, video streaming (including but not limited to YouTube and Vevo), or non-interactive, "programmed," personalized, and/or customized streaming, and any analyses or projections of anticipated revenues or earnings with respect to such agreements – including requests for licenses and negotiations that did not result in an executed license.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. As written, the request seeks potentially hundreds of thousands of documents between witnesses' record companies and numerous digital music services, including documents related to negotiations for agreements that no witness or party has considered in connection with this proceeding, without any reasonable limitation to the issues in this proceeding. All documents related to the negotiations of agreements with Digital Services offering on-demand, video, or non-interactive streaming includes *every* document for the numerous individuals whose work includes negotiating digital licenses. SoundExchange objects to this request to the extent it purports to require an unreasonable and unduly burdensome search for documents from every label within a larger record company. Such documents are not kept at a central location in the normal course of business. SoundExchange further objects to this request to the extent it seeks information and

documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange further objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding, including time periods that pre-date the current statutory rate period. SoundExchange objects to this document request as compound and containing multiple discrete subparts, to the extent it asks SoundExchange to gather documents from numerous companies. SoundExchange objects to the phrase "all documents related to the negotiation" as not only overbroad, but ambiguous and vague. SoundExchange interprets "documents related to the negotiation of the agreements" to mean those documents exchanged with the counterparty to the agreement which includes any "analyses or projections" exchanged with the counterparty but excludes any internal analyses or documents related to the negotiation of such agreements. SoundExchange further objects to this request as directed at independent record labels for whom searching for such documents is unduly burdensome and as directed at Iconic Entertainment Group, which is not even a record company.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents related to the negotiation of agreements where such negotiations were explicitly referenced by SoundExchange witnesses and therefore "directly related" to SoundExchange's written direct statement. Specifically, SoundExchange agrees to produce non-privileged negotiating documents exchanged between the primary negotiating team for Warner Music Group and iHeartMedia, Inc. from 2011 to October 2014 as directly related to the testimony of Ron Wilcox. SoundExchange will also produce negotiating documents exchanged between lead negotiators at Universal Music Group and MySpace, Inc. from 2011 to October 2014 as well as those exchanged between lead negotiators at Universal Music Group and Slacker, Inc. from 2011 to October 2014, as directly related to the testimony of Aaron Harrison. SoundExchange will also produce negotiating documents exchanged between Mr. Van Arman and Rhapsody International located after a reasonable search.

REQUEST FOR PRODUCTION NO. 8:

For the agreements of each witness's company (or any of its subsidiary labels or affiliates) with any Digital Service offering on-demand streaming, video streaming, or custom, personalized or non-interactive streaming, all royalty statements/ statements of account from the Digital Service for each quarterly reporting period (or other regular reporting period specified by the agreement) since January 1, 2009.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. As written, the request seeks thousands of royalty statements, including those related to agreements that no witness or

REQUEST FOR PRODUCTION NO. 10:

Each document reflecting, referring to, or discussing each witness's company's strategy for licensing Digital Services, or the effect on the record companies' revenues or business of such record company's licenses with Digital Services, including any memoranda, checklists, templates, policy manuals, training materials, best practices or similar materials relating to such approach.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

SoundExchange objects to this request to the extent that it seeks documents that are not "directly related" to SoundExchange's written direct testimony. SoundExchange objects to this request because it is overbroad and unduly burdensome, as it appears to seek the production of every document witnesses' companies has ever created related to strategy for licensing to Digital Services or the effect of such licenses on revenues. Employees of witnesses' companies discuss, analyze, or refer to strategy for licensing to Digital Services on a daily basis. SoundExchange further objects to the defined term Digital Services as overbroad and creating undue burden, because it sweeps far too widely and potentially implicates thousands of music services, many of which are not relevant as they involve rights not comparable to the rights licensed by §§ 114 and 112 at issue in this proceeding. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this document request as compound and containing multiple discrete subparts, to the extent it asks SoundExchange to gather documents from numerous companies. SoundExchange further objects to this request as directed at independent record labels for whom searching for such documents is unduly burdensome and as directed at Iconic Entertainment Group, which is not even a record company.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business, if any such document exists, sufficient to show the three major record companies' strategy for digital licensing.

REQUEST FOR PRODUCTION NO. 11:

Annual financial statements for each witness's company (and, to the extent separately maintained, for each of the company's subsidiary labels) for the years 2009 to the present, including documents sufficient to show the company's revenue from statutory licensing, digital downloads, other digital sources, sales of physical units, and any other categories of sales

kept at a central location in the normal course of business. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange further objects to this request because it seeks document for time periods not reasonably related to this proceeding. SoundExchange further objects to the compound request for separate analyses and recording agreements, neither of which is directly relate to SoundExchange's written direct statement. SoundExchange further objects to this request as directed at independent record labels for whom searching for such documents is unduly burdensome and as directed at Iconic Entertainment Group, which is not even a record company. SoundExchange objects to the request for recording agreements which are not relevant to this proceeding.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found at the corporate level of the three major record companies and agrees to produce those documents sufficient to show the aggregate amount of advances written off kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony. SoundExchange will not produce analyses or recording agreements.

REQUEST FOR PRODUCTION NO. 14:

All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, referring or relating to the existence or nonexistence of a substitutional or promotional effect by any Digital Service or terrestrial radio on other sources of record company revenue.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

SoundExchange objects to this request to the extent that it seeks documents that are not "directly related" to SoundExchange's written direct testimony. Specifically, terrestrial radio is not a "market[]" that [SoundExchange] identified in its submissions as relevant to determining webcasting rates and terms and that may have been considered by [SoundExchange] or its experts . . .", Order Granting Services Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds (October 30, 2014). SoundExchange objects to this request because it is overbroad and unduly burdensome, as it appears to seek the production of every document witnesses' companies has ever created related to the promotional or substitutional effect of Digital Services or terrestrial radio on other sources of revenue. Employees of witnesses' companies regularly refer to promotional and/or substitutional effects in the course of their work. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange further objects to the defined

term Digital Services as overbroad and creating undue burden because it sweeps far too widely and potentially implicates thousands of music services, many of which are not relevant as they involve rights not comparable to the rights licensed by §§ 114 and 112 at issue in this proceeding. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this document request as compound and containing multiple discrete subparts, to the extent it asks SoundExchange to gather documents from numerous companies. SoundExchange further objects to this request as directed at independent record labels for whom searching for such documents is unduly burdensome and as directed at Iconic Entertainment Group, which is not even a record company.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents where such documents would most likely be found at the corporate level of the three major record companies and agrees to produce those documents related to the substitutional or promotional effect of streaming music services in the places kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

REQUEST FOR PRODUCTION NO. 15:

All documents concerning to the promotional effects of terrestrial radio airplay and/or performances on any webcasting or streaming service, including (a) all analyses, research, studies, or surveys performed concerning such promotional effects; and (b) documents sufficient to show the amounts spent by each witness's company (or its subsidiary labels) to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

SoundExchange objects to this request to the extent that it seeks documents that are not "directly related" to SoundExchange's written direct testimony. Specifically, terrestrial radio is not a "market[]" that [SoundExchange] identified in its submissions as relevant to determining webcasting rates and terms and that may have been considered by [SoundExchange] or its experts . . .", Order Granting Services Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds (October 30, 2014). SoundExchange objects to this request because it is overbroad and unduly burdensome to the extent that it seeks documents not directly related to SoundExchange's written direct

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as both duplicative and overbroad, unduly burdensome, oppressive, and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent it purports to require an unreasonable and unduly burdensome search for documents from every label within a larger record company. Such documents are not kept at a central location in the normal course of business.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business sufficient to show the aggregate amounts spent by Sony to promote artists and sound recordings the extent directly related to SoundExchange’s written direct testimony.

REQUEST FOR PRODUCTION NO. 30:

For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony’s Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

This document request appears to be an exact duplicate of Request for Production No. 29. The response to that request is hereby incorporated fully.

REQUEST FOR PRODUCTION NO. 31:

All documents related to the statement on pages 6-7 of Mr. Kooker’s written direct testimony that “the highest ARPU is generated from paying subscribers of directly

attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents related to the shift from an ownership model to an access model in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

REQUEST FOR PRODUCTION NO. 45:

All documents related to the contention on page 9 of the Harrison testimony that "we seek to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenue from other forms of exploitation, including higher ARPU subscription streaming services," including all studies, analyses, memoranda or documents otherwise concerning similarities and/or differences between types of streaming services, and the degree to which they do or do not substitute for one another.

RESPONSE TO REQUEST FOR PRODUCTION NO. 45:

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as both duplicative and overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison's testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable

search for additional documents in the places where such documents would most likely be found and agrees to produce those documents related to substitution between streaming services kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

REQUEST FOR PRODUCTION NO. 46:

Documents from January 1, 2009, to the present concerning Universal's "approach to the market for the distribution of recorded music" (Harrison testimony page 4), including but not limited to strategic plans, presentations, memos, analyses, etc., whether for Universal, any of its labels, or industry-wide.

RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as hopelessly overbroad, unduly burdensome, oppressive and harassing as Universal's "approach to the market for the distribution of recorded music" could be interpreted to include every document created by Universal. SoundExchange further objects to this request as ambiguous and vague. SoundExchange interprets this request to be seeking strategy documents as related to the digital distribution of sound recordings. SoundExchange objects to this request to the extent it purports to require an unreasonable and unduly burdensome search for documents from every label within a larger record company. Such documents are not kept at a central location in the normal course of business. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding, including time periods that pre-date the current statutory rate period. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business sufficient to show Universal's approach to the digital distributions of sound recordings to the extent directly related to SoundExchange's written direct testimony.

REQUEST FOR PRODUCTION NO. 47:

All documents related to the contention on page 9 of the Harrison testimony that "Pandora is streaming music to users who might otherwise pay for a subscription or use a higher

seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents related to the competition between statutory and on-demand services kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

REQUEST FOR PRODUCTION NO. 49:

All studies, analyses, surveys, presentations, memoranda or other documents related to the following contentions of Mr. Harrison as to the promotional or substitutional impact of Digital Services:

- a. "Over the past few years, we have grown to understand that neither on-demand nor customized streaming services promote sales of recorded music" (p. 5)
- b. "If a user has 'customized' her or his preferences through a streaming service, the user knows they have a good chance of hearing songs they like, or others like them, and thus see a diminished need to own a particular recording"
- c. "these services are drawing consumers and revenue away from the sale of permanent downloads and CDs"
- d. "on-demand and customized streaming services do not promote sales of downloads"
- e. The requested documents include, without limitation, all documents concerning the potential or actual substitution of any Digital Service for any other Digital Service and/or sales of compact discs, vinyl records or digital downloads.

RESPONSE TO REQUEST FOR PRODUCTION NO. 49:

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as duplicative of prior document requests, compound, and overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to the defined term Digital Services as overbroad and creating undue burden, because it sweeps far too widely and

potentially implicates thousands of music services, many of which are not relevant as they involve rights not comparable to the rights licensed by §§ 114 and 112 at issue in this proceeding. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison's testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business to the extent directly related to the promotional or substitutional impact of interactive and non-interactive services on other sources of revenue.

REQUEST FOR PRODUCTION NO. 50:

All documents, including without limitation any studies, analyses, surveys, presentations, memoranda or other documents, related to the statement in paragraph 13 of Mr. Harrison's testimony that "we have found that streaming services cannot generate sufficient ARPU through advertising alone."

RESPONSE TO REQUEST FOR PRODUCTION NO. 50:

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as both duplicative and overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison's testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist. SoundExchange objects to this request to the extent it seeks internal documents discussing the value of the consideration. The consideration received can be evaluated by looking to the final agreement which represents the consideration to which a willing buyer and seller would agree. SoundExchange has already produced numerous agreements with streaming music services that are evidence of the value of these provisions. Further, SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. For the aforementioned reasons, SoundExchange will not produce additional documents pursuant to this request.



Exhibit C

PUBLIC

Exhibit Restricted in Its Entirety




Exhibit D

From: Ehler, Rose [<mailto:Rose.Ehler@mto.com>]

Sent: Sunday, December 07, 2014 8:12 PM

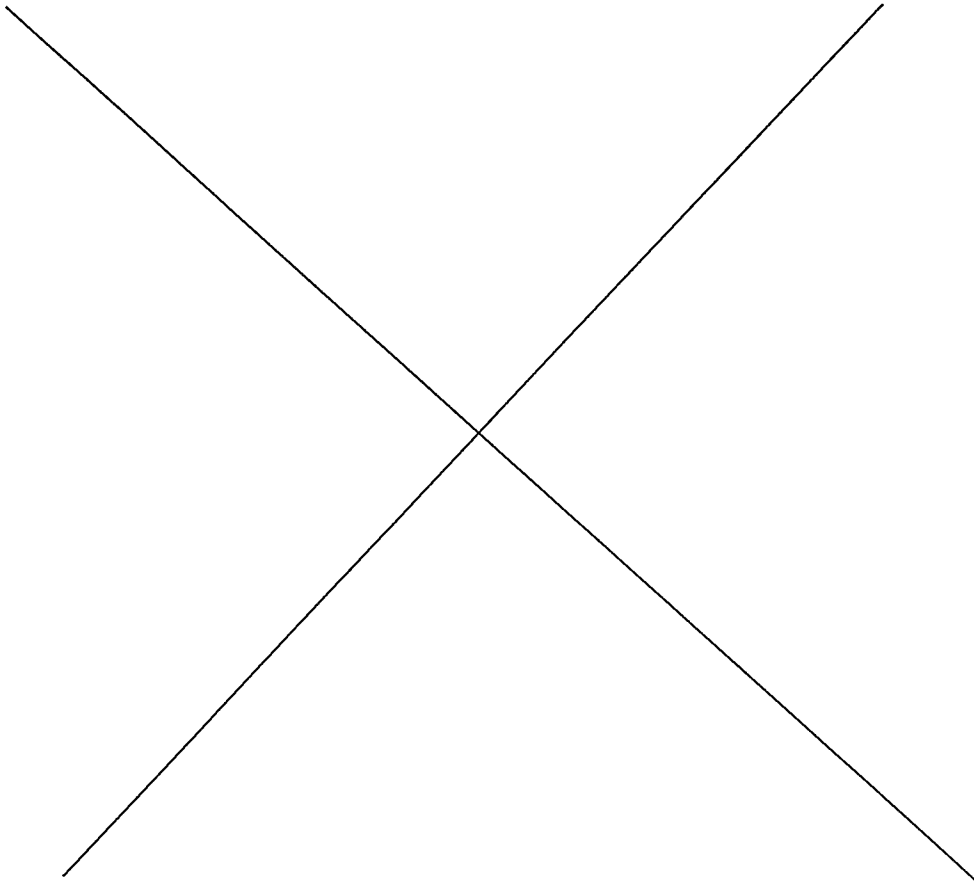
To: Toof, Jackson

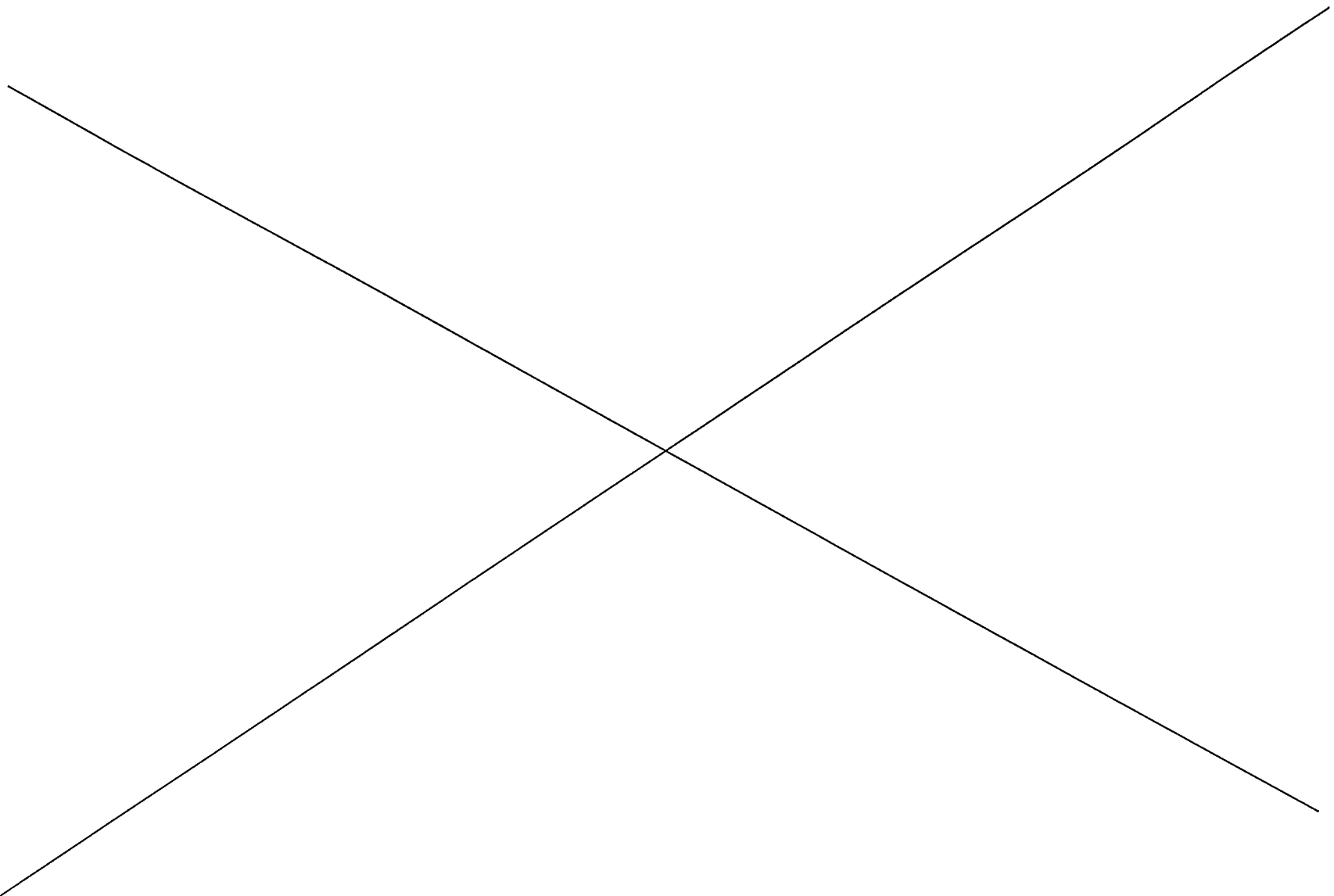
Cc: LeMoine, Melinda; Perelman, Sabrina; Pomerantz, Glenn; Klaus, Kelly; Choudhury, Anjan; Olasa, Kuruvilla; Cunniff, Martin; Joseph, Bruce; Ablin, Karyn; Sturm, Michael; Mills, Chris; Pacella, Mark; Collins, Reed; Larson, Todd; eleo@khhte.com; Fakler, Paul M.

Subject: RE: Web IV: SoundExchange's Production in Response to Second Set of Document Requests

Jackson and all,

Good evening. Thank you for outlining the issues in more depth on our call yesterday and providing your assessment of where we stand. We have the following clarifications and additional information to report.

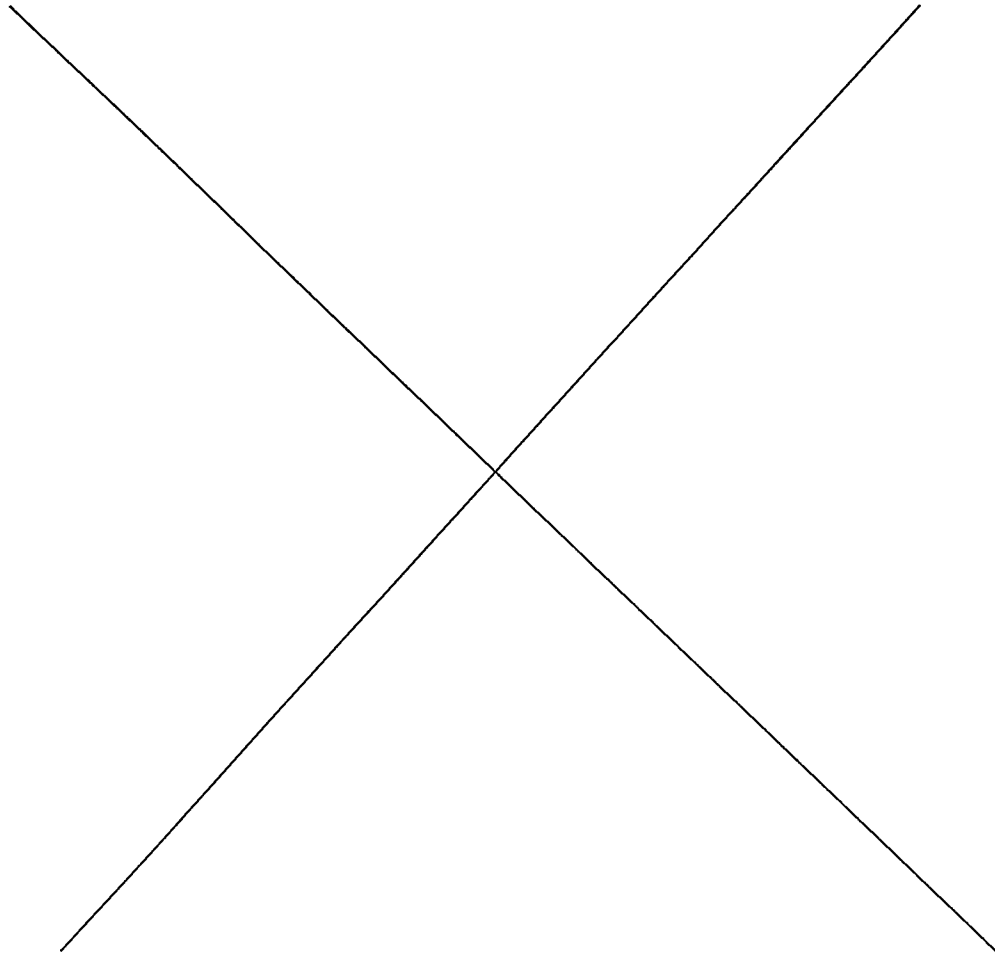


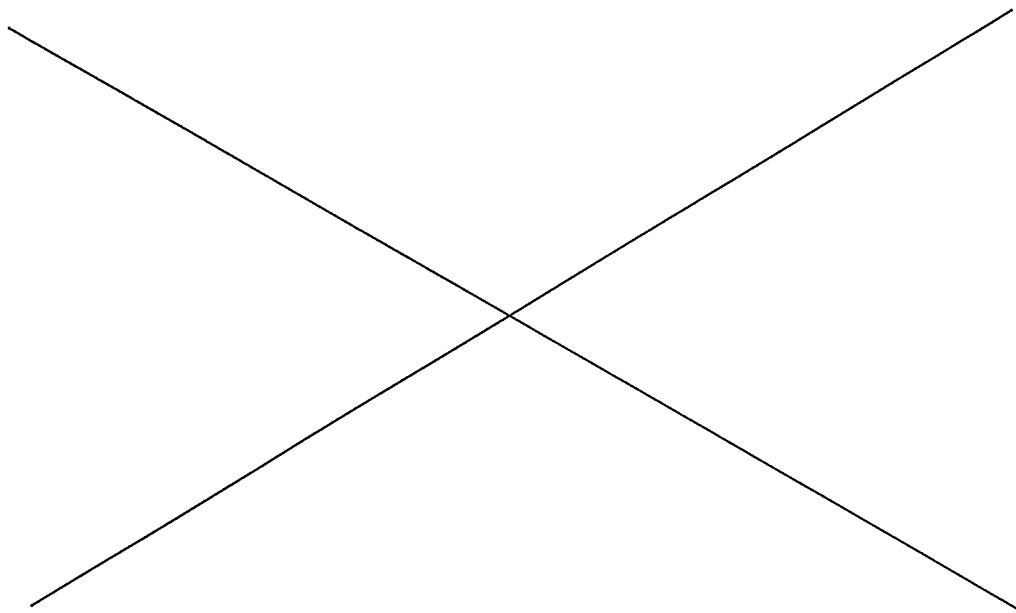


to Request No. 7 because both seek internal negotiating documents. It's clear from the text of Request No. 7 that it does not cover negotiations for agreements never reached. SoundExchange was attempting to inquire as to what relation this *additional* request for internal negotiating documents had to the prior discussions of a compromise production as related to Request No. 7. Your proposed stipulation does not appear to cover that request or address SoundExchange's prior offer. SoundExchange maintains its objections to this request, but in the spirit of compromise would be willing to discuss whether models *such as those requested* would satisfy the Services given the massive burden that such a request for *all* internal negotiating documents would involve. Please let us know if you're amenable to such a compromise so we can discuss further.

Two UMG promotional policy documents referred to during Mr. Harrison's

deposition: We are still investigating this issue and are locating the policy documents. We do not believe that either is directly related to Mr. Harrison's written direct testimony and, contrary to Paul's email below (which, we understand was likely written without the benefit of having SoundExchange's objections and responses in front of him), SoundExchange did not agree to provide such documents in our objections and responses to the Services First Request for Production of Documents.





From: Toof, Jackson [<mailto:Jackson.Toof@arentfox.com>]

Sent: Sunday, December 07, 2014 8:42 AM

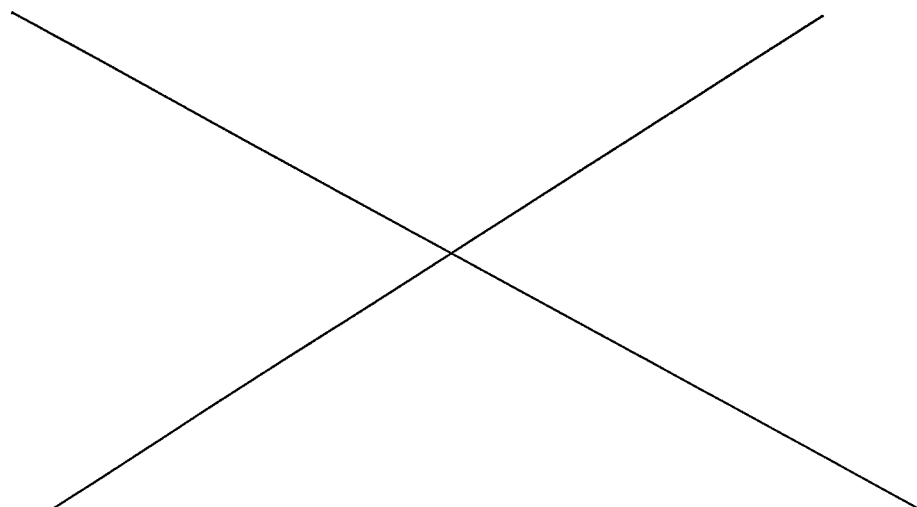
To: Ehler, Rose

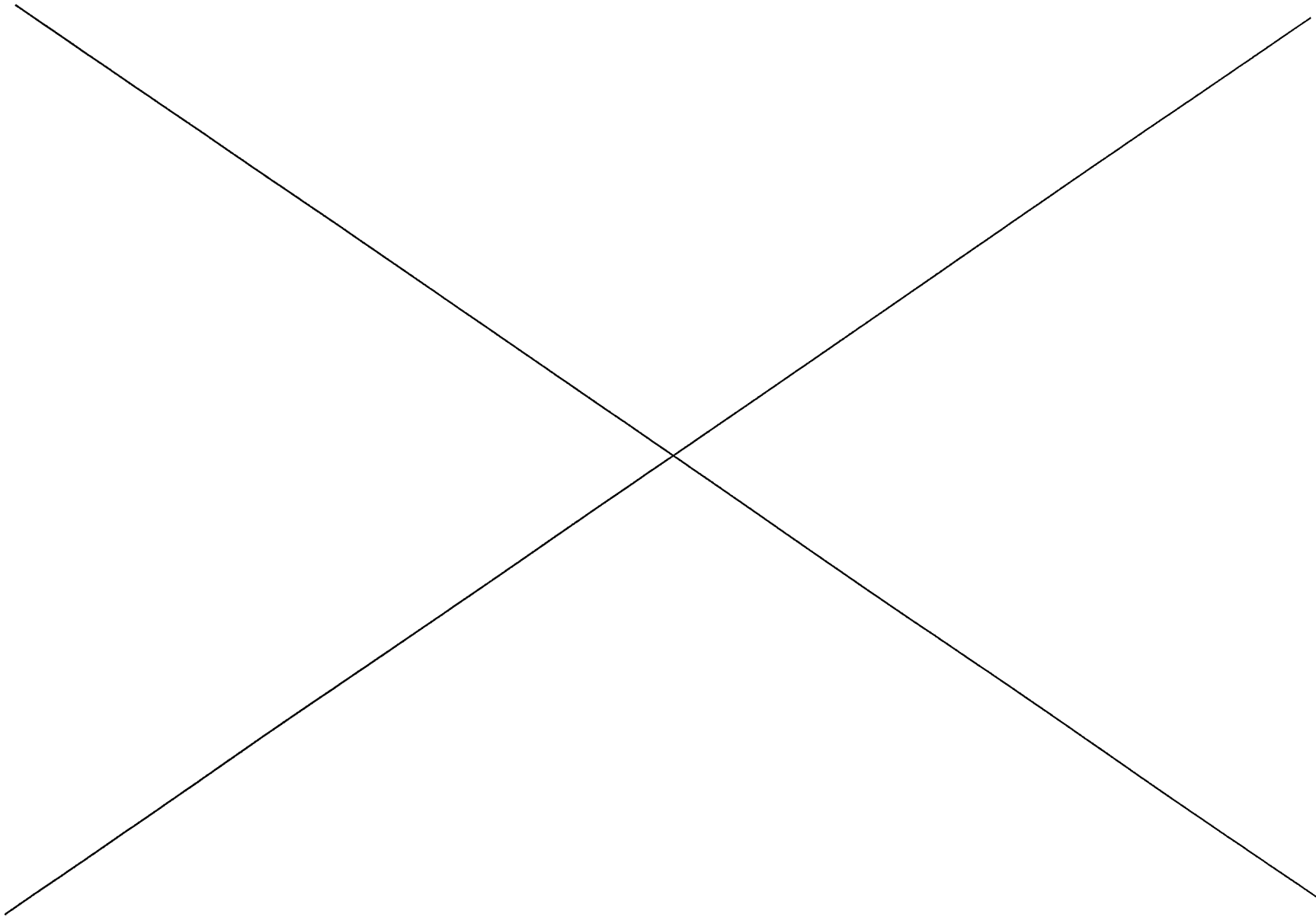
Cc: LeMoine, Melinda; Perelman, Sabrina; Pomerantz, Glenn; Klaus, Kelly; Choudhury, Anjan; Olas, Kuruvilla; Cunniff, Martin; bjoseph@wileyrein.com; kablin@wileyrein.com; msturm@wileyrein.com; cmills@wileyrein.com; MPacella@wileyrein.com; Collins, Reed; Larson, Todd; eleo@khhte.com; Fakler, Paul M.

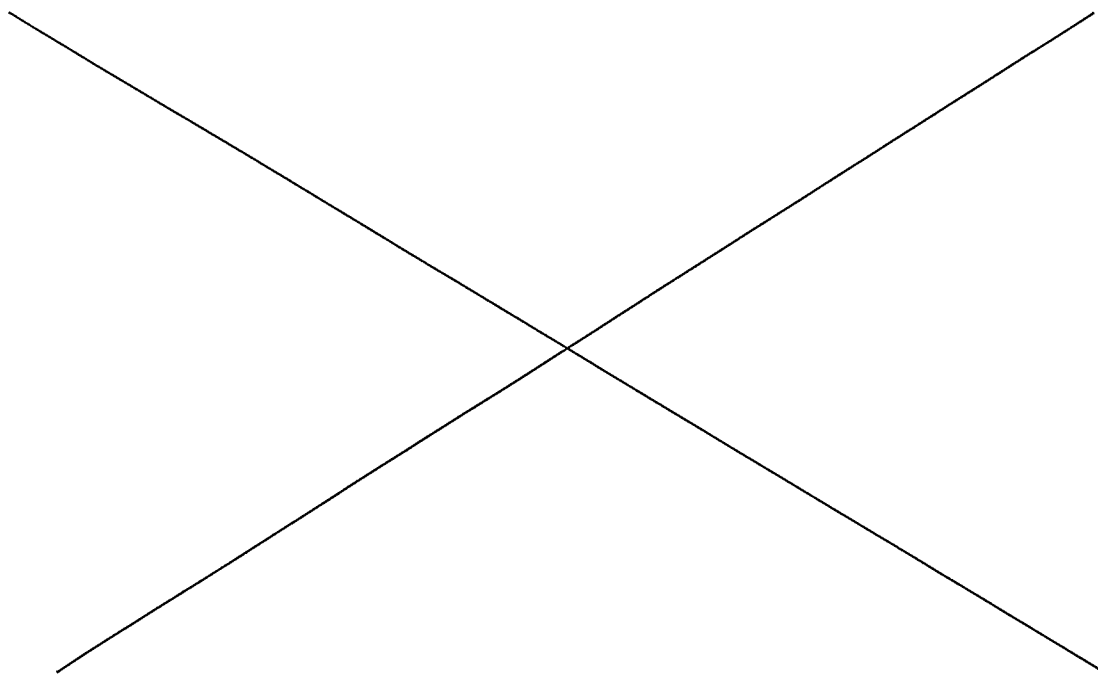
Subject: RE: Web IV: SoundExchange's Production in Response to Second Set of Document Requests

Rose,

Good morning. Thanks for speaking with us yesterday. The following memorializes our discussion during the December 6 meet and confer. Please let us know if you believe we have misstated anything.







Financial Models of Potential UMG-Amazon and UMG-iHeartMedia Deals: You stated that you were looking for financial models of UMG's offer to iHeartMedia in November 2012 and UMG's potential deal with Amazon, but have not yet decided whether you will produce these documents, which you acknowledge are responsive to our document request No. 7. You asked that we get back to you as to our view on the scope of your responsibilities under Request No. 7. We would be willing to stipulate that we not seek additional internal record label documents concerning the UMG-Amazon and the UMG-iHeartMedia negotiations if the financial models we have specifically requested are produced. Please let us know whether this stipulation is acceptable to you and you will be producing these financial models by Sunday evening.

Two UMG promotional policy documents referred to during Mr. Harrison's deposition: You stated that you were considering producing these and would get back to us promptly as to whether you will do so. Please let us know whether you will be producing these documents by Sunday evening.



Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
THE LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of)
)
)

DETERMINATION OF ROYALTY RATES) Docket No. 14-CRB-0001-WR
FOR DIGITAL PERFORMANCE IN SOUND) (2016-2020)
RECORDINGS AND EPHEMERAL)
RECORDINGS (WEB IV))
_____)

DECLARATION AND CERTIFICATION OF SCOTT H. ANGSTREICH
ON BEHALF OF IHEARTMEDIA, INC.

1. I am one of the counsel for iHeartMedia, Inc. (“iHeartMedia”) in this proceeding, and I submit this Declaration in support of the restricted version of iHeartMedia’s Motion To Compel SoundExchange To Produce Documents Identified During the Deposition of Aaron Harrison.

2. On October 10, 2014, the CRB adopted a Protective Order that limits the disclosure of materials and information marked “RESTRICTED” to outside counsel of record in this proceeding and certain other parties described in subsection IV.B of the Protective Order. *See* Protective Order (Oct. 10, 2014). The Protective Order defines “confidential” information that may be labeled as “RESTRICTED” as “information that is commercial or financial information that the Producing Party has reasonably determined in good faith would, if disclosed, either competitively disadvantage the Producing Party, provide a competitive advantage to another party or entity, or interfere with the ability of the Producing Party to obtain like information in the future.” *Id.* The Protective Order further requires that any party producing such confidential information must “deliver with all Restricted materials an affidavit

or declaration . . . listing a description of all materials marked with the 'Restricted' stamp and the basis for the designation." *Id.*

3. I submit this declaration describing the materials iHeartMedia has designated "RESTRICTED" and the basis for those designations, in compliance with Sections IV.A of the Protective Order. I have determined to the best of my knowledge, information and belief that the materials described below, which are being produced to outside counsel of record in this proceeding, contain confidential information.

4. The confidential information comprises or relates to (1) contracts, contractual terms, and contract strategy that are proprietary, not available to the public, competitively sensitive, and often subject to express confidentiality provisions with third parties; and (2) financial projections, financial data, and business strategy that are proprietary, not available to the public, and commercially sensitive.

5. If the confidential information were to become public, it would place iHeartMedia at a commercial and competitive disadvantage; unfairly advantage other parties to the detriment of iHeartMedia; and jeopardize iHeartMedia's business interests. Information related to iHeartMedia's confidential contracts or contract strategy could be used by iHeartMedia's competitors, or by other content providers, to formulate rival bids, bid up iHeartMedia payments, or otherwise unfairly jeopardize iHeartMedia's commercial and competitive interests.

6. With respect to the financial information, I understand that iHeartMedia has not disclosed to the public or the investment community the financial information that it seeks to restrict here, including its internal financial projections and specific royalty payment information. Consequently, neither iHeartMedia's competitors nor the investing public has been privy to that information, which iHeartMedia has treated as highly confidential and sensitive, and

has guarded closely. In addition, when iHeartMedia does disclose information about its finances to the market as required by law, iHeartMedia provides accompanying analysis and commentary that contextualizes disclosures by its officers. The information that iHeartMedia seeks to restrict by designating it confidential is not intended for public release or prepared with that audience in mind, and therefore was not accompanied by the type of detailed explanation and context that usually accompanies such disclosures by a company officer. Moreover, the materials include information that has not been approved by iHeartMedia's Board of Directors, as such sensitive disclosures usually are, and is not accompanied by the disclaimers that usually accompany such disclosures. iHeartMedia could experience negative market repercussions and competitive disadvantage were this confidential financial information released publicly without proper context or explanation.

7. The contractual, commercial and financial information described above must be treated as restricted confidential information in order to prevent business and competitive harm that would result from the disclosure of such information.

8. In addition, iHeartMedia is designating material from Mr. Aaron Harrison's deposition "RESTRICTED" because it anticipates the SoundExchange will designate all or part of the deposition "RESTRICTED."

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that the foregoing is true and correct.

December 8, 2014

Respectfully submitted,

/s/ Scott H. Angstreich

Scott H. Angstreich (D.C. Bar No. 471085)
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999
sangstreich@khhte.com

Counsel for iHeartMedia, Inc.

CERTIFICATE OF SERVICE

I, Scott H. Angstreich, hereby certify that a copy of the foregoing Declaration and Certification in Support of the RESTRICTED version of iHeartMedia, Inc.'s Motion To Compel SoundExchange To Produce Documents Identified During the Deposition of Aaron Harrison has been served on this 8th day of December 2014 on the following persons:

Jeffrey J. Jarmuth
Law Offices of Jeffrey J. Jarmuth
34 E. Elm Street
Chicago, IL 60611-1016
jeff.jarmuth@jarmuthlawoffices.com

Counsel for AccuRadio, LLC

David Oxenford
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
doxenford@wbklaw.com

*Counsel for Educational Media Foundation
and National Association of Broadcasters*

Kenneth L. Steinthal
Joseph R. Wetzel
King & Spalding LLP
101 Second Street, Suite 2300
San Francisco, CA 94105
ksteinthal@kslaw.com
jwetzel@kslaw.com

Counsel for National Public Radio, Inc.

David D. Golden
Constantine Cannon LLP
1001 Pennsylvania Avenue NW, Suite 1300N
Washington, DC 20004
dgolden@constantinecannon.com

Counsel for College Broadcasters, Inc.

Bruce G. Joseph
Karyn K. Ablin
Michael L. Sturm
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
bjoseph@wileyrein.com
kablin@wileyrein.com
msturm@wileyrein.com

*Counsel for National Association of
Broadcasters*

Ethan Davis
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006
edavis@kslaw.com

Counsel for National Public Radio, Inc.

Karyn K. Ablin
Jennifer L. Elgin
Wiley Rein LLP
1776 K St. NW
Washington, DC 20006
kablin@wileyrein.com
jelgin@wileyrein.com

*Counsel for National Religious Broadcasters
Noncommercial Music License Committee*

Gary R. Greenstein
Wilson Sonsini Goodrich & Rosati
1700 K Street, NW, 5th Floor
Washington, DC 20006
ggreenstein@wsgr.com

Counsel for Pandora Media, Inc.

Paul Fakler
Arent Fox LLP
1675 Broadway
New York, NY 10019
paul.fakler@arentfox.com

Counsel for Sirius XM Radio Inc.

Glenn D. Pomerantz
Kelly M. Klaus
Anjan Choudhury
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560
Glenn.Pomerantz@mto.com
Kelly.Klaus@mto.com
Anjan.Choudhury@mto.com

Counsel for SoundExchange, Inc.

R. Bruce Rich
Todd D. Larson
Sabrina A. Perelman
Benjamin E. Marks
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
r.bruce.rich@weil.com
todd.larson@weil.com
sabrina.perelman@weil.com
benjamin.marks@weil.com

Counsel for Pandora Media, Inc.

Jacob B. Ebin
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036-6745
jebin@akingump.com

Counsel for Pandora Media, Inc.

Martin F. Cunniff
Jackson D. Toof
Arent Fox LLP
1717 K Street, NW
Washington, DC 20006
martin.cunniff@arentfox.com
jackson.toof@arentfox.com

Counsel for Sirius XM Radio Inc.

/s/ Scott H. Angstreich

Scott H. Angstreich
KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
sangstreich@khhte.com
Tel: 202-326-7900
Fax: 202-326-7999

Counsel for iHeartMedia, Inc.